

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

LANNY DALE GUNTER,
Appellant.

No. 2 CA-CR 2019-0006
Filed November 7, 2019

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. S1100CR201700831
The Honorable Joseph R. Georgini, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Harriette P. Levitt
Counsel for Appellant

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MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Staring and Chief Judge Vásquez concurred.

BREARCLIFFE, Judge:

¶1 Lanny Gunter appeals from his convictions after a jury trial on two counts of aggravated driving under the influence of an intoxicant while license was suspended.¹ The trial court imposed concurrent, presumptive prison terms of 4.5 years on each count. In this appeal, Gunter does not dispute that, at the time of the incident, his driver license was suspended or that his blood-alcohol concentration met any required threshold level for the offenses. Gunter asserts only that the state presented no evidence, other than his own statements, that he drove or was in actual physical control of a vehicle. Therefore, he contends, there was insufficient evidence to sustain a guilty verdict because the state failed to establish *corpus delicti*. The state contends there was substantial and sufficient evidence to sustain a conviction. The issue is whether there was sufficient evidence beyond Gunter's admissions to support the jury's verdicts. We affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the jury's verdicts. *State v. Payne*, 233 Ariz. 484, ¶ 76 (2013). In October 2016, while working the 9:00 p.m. to 7:00 a.m. shift as store manager at a convenience store, D.G. saw a red van pull into the parking lot. D.G. could see a man alone in the van, sitting in the driver's seat. After approximately ten to fifteen minutes, the man got out of the driver's side of the van and walked into the store. He was "kind of swaying" and "not walking . . . in a straight line" and smelled of alcohol.

¹Gunter was initially charged with four counts of aggravated driving or in actual physical control of a vehicle while license was suspended, however the state dismissed counts three and four prior to trial.

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¶3 The man walked to the beer cooler, removed a case of beer, and brought it to the register. D.G. directed the cashier not to sell alcohol to the man, and told him to leave the store. The man briefly protested and demanded that they sell him the beer, and after they refused again, he left. D.G. saw him leave the store and get into the back seat of the van. D.G. did not see anyone else in the van at the time, nor did she see anyone else leave the van. D.G. could see the man's head bobbing up and down, as though he was dozing off. She called the police, who arrived approximately four minutes later.

¶4 When officers arrived, they found Gunter sitting alone in the back seat of the van. Gunter had slurred speech and bloodshot, watery eyes, and the officer could smell alcohol coming from the van. Gunter initially stated an unidentified friend drove him. Then, he told officers that B.H., whom he described as his wife,² was at the store. He finally admitted he drove to the convenience store. When an officer asked Gunter where the van keys were, he answered that they were between the front passenger seat and the driver's seat. The officer found the keys on the floor in the open space between those two seats, accessible from where Gunter was seated.

¶5 Gunter was arrested after field sobriety tests indicated he was impaired. Following his arrest, he consented to a blood draw, and testing of a blood sample indicated a blood-alcohol concentration of .305, plus or minus .016.

¶6 At trial, D.G. was not able to identify Gunter in the courtroom. B.H. testified she did not drive Gunter to the store. She also testified Gunter told her that her cousin, L.S., had driven him, but L.S. testified she had not driven him to the store. Gunter did not testify.

¶7 The jury found Gunter guilty, and the trial court sentenced him as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21, 13-4031, and 13-4033.

Analysis

¶8 "We review *de novo* the denial of a motion for a judgment of acquittal and the sufficiency of the evidence to support a conviction." *State v. Harm*, 236 Ariz. 402, ¶ 11 (App. 2015). Evidence is insufficient only if

²B.H. testified she and Gunter were no longer legally married, but are in a relationship and live together.

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there is “no substantial evidence to warrant a conviction.” *State v. Mathers*, 165 Ariz. 64, 67 (1990) (quoting Ariz. R. Crim. P. 20(a)). “Substantial evidence is more than a mere scintilla and is such proof that ‘reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.’” *Id.* (quoting *State v. Jones*, 125 Ariz. 417, 419 (1980)). Evidence may be direct or circumstantial, but if reasonable minds can differ on inferences to be drawn therefrom, the evidence is sufficient. *State v. Landrigan*, 176 Ariz. 1, 4 (1993). “The relevant question is whether . . . any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Buccheri-Bianca*, 233 Ariz. 324, ¶ 24 (App. 2013) (quoting *State v. West*, 226 Ariz. 559, ¶ 16 (2011)).

¶9 “A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person . . . [c]ommits a violation of § 28-1381 . . . while the person’s driver license or privilege to drive is suspended . . .” A.R.S. § 28-1383. Section 28-1381(A)(1) states, “[i]t is unlawful for a person to drive or be in actual physical control of a vehicle . . . [w]hile under the influence of intoxicating liquor . . . if the person is impaired to the slightest degree.”

¶10 Gunter argues there was no evidence presented – apart from his own admissions at the scene – to support a finding that he was driving or in actual physical control of the vehicle. Consequently, he maintains, the state failed to establish *corpus delicti*. The *corpus delicti* rule prevents a defendant from being convicted “based upon an uncorroborated confession without independent proof of the corpus delicti, or the ‘body of the crime.’” *State v. Rubiano*, 214 Ariz. 184, ¶ 6 (App. 2007) (quoting *State v. Morgan*, 204 Ariz. 166, ¶ 15 (App. 2007)). That is, “the rule requires that, before a defendant’s confession or incriminating statements may be admitted at trial as evidence of a crime, the state must establish with independent evidence that a crime occurred and that someone is responsible for that offense.” *Id.* ¶ 6. “Corpus delicti can be established by circumstantial evidence, or by independent corroboration of the defendant’s statements.” *State v. Chappell*, 225 Ariz. 229, ¶ 9 (2010) (citations omitted). There was sufficient circumstantial evidence here that Gunter was the man who drove the van into the store parking lot. There was also independent corroboration of his admission that he drove himself – given that his claims of having been driven by others were shown to be false.

¶11 Although D.G. could not identify Gunter at trial, she did see a man, alone, drive the red van into the convenience store parking lot, park, exit through the driver’s side door, enter the store, attempt to buy alcohol

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while apparently intoxicated, then return to the van by climbing into the back seat. She saw no one else leave the van. Officers, just minutes later, found Gunter in the back seat of that same van. While it is possible that someone else smelling of alcohol could have driven the van, gotten into the back seat, and then disappeared without exiting the van in the traditional way (through a door)—all while Gunter lay innocently asleep—Gunter points to no evidence in the record supporting such a possibility. *See State v. Nash*, 143 Ariz. 392, 404 (1985) (state need not “negate every conceivable hypothesis of innocence when guilt has been established by circumstantial evidence”).

¶12 Additionally, Gunter told the officers where to find the van’s keys and they indeed found them where he said they would be, within his reach. The jury could reasonably infer that Gunter placed them there after parking at the convenience store. Lastly, Gunter’s initial exculpatory statements that either B.H. or another person drove him to the convenience store were ultimately disproven (or, at a minimum, unsupported) at trial.

¶13 Thus, the state presented substantial evidence that “reasonable persons could accept as adequate and sufficient to support a conclusion of defendant’s guilt beyond a reasonable doubt.” *Jones*, 125 Ariz. at 419. The jury in this case was instructed to “decide facts only from the evidence presented in court. . . . [and] not speculate or guess,” and we presume juries follow the trial court’s instructions. *State v. Payne*, 233 Ariz. 484, ¶ 120 (2013).

Disposition

¶14 We affirm Gunter’s convictions and sentences.